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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/707,280
Filing Date: November 06, 2000
Appellant(s): JACKSON ET AL.

David A. Dagg (37,809)
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 02/23/2006 appealing from the Office action mailed 08/23/2005.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6,331,972	HARRIS	12-2001
6,104,913	MCALLISTER	8-2000
5,493,692	THEIMER	2-1996

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-5, 7-16, 18-24, 26-35, 37-40, 42-48, 50-59, 61-64, 66-68 and 71-75 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent 6,331,972 by Harris et al. (Harris).

With respect to Claim 1, Harris teaches a method for providing a personalized service in a communication system, the method comprising: detecting physical presence of a user (Col. 6 lines 20-45), wherein the detecting includes a determination based on at least one physical attribute of the user, that the user is currently in close physical proximity to the communication system (Col. 6 lines 20-45); and providing the personalized service to the user based upon the physical presence of the user (Col. 6 lines 20-45 and Col. 9 line 52 - Col. 10 line 23).

With respect to Claim 2, Harris teaches all the limitations of Claim 1 and further teaches wherein detecting the physical presence of the user comprises: using a detector to detect the physical presence of the user (Col. 6 lines 20-45 and Col. 9 lines 10-20).

With respect to Claim 3, Harris teaches all the limitations of Claim 1 and further teaches wherein detecting the physical presence of the user comprises: using a detector in combination with an appliance gateway to detect the physical presence of the user (Col. 6 lines 20-45 and Col. 8 lines 35-64).

With respect to Claim 4, Harris teaches all the limitations of Claim 1 and further teaches wherein providing the personalized service to the user based upon the physical presence of the user comprises: using an appliance gateway to provide the personalized service to the user based upon the physical presence of the user (Col. 8 lines 35-64 and Col. 10 lines 6-23).

With respect to Claim 5, Harris teaches all the limitations of Claim 1 and further teaches wherein detecting physical presence of the user comprises: identifying the user (Col. 8 lines 6-20 and Col. 10 lines 1-23 and lines 48-64).

With respect to Claim 7, Harris teaches all the limitations of Claim 5 and further teaches wherein providing the personalized service to the user based upon the physical presence of the user comprises: providing the personalized service to the user based upon the identity of the user (Col. 10 lines 1-23 and note each example embodiment from cols 13-20).

With respect to Claim 8, Harris teaches all the limitations of Claim 7 and further teaches wherein providing the personalized service to the user based upon the physical presence of the user comprises: obtaining user-specific information based upon the identity of the user; and providing the personalized service to the user based upon the user-specific information (Col. 10 lines 1-23).

With respect to Claim 9, Harris teaches all the limitations of Claim 8 and further teaches wherein the user-specific information comprises at least one of: per-user rules; user-defined rules; user preferences; and user applications (Col. 10 lines 1-23, Col. 12 lines 40-67, and Col. 14 lines 3-24).

With respect to Claim 10, Harris teaches all the limitations of Claim 8 and further teaches wherein obtaining user-specific information based upon the identity of the user comprises at least one of: retrieving the user-specific information from a local storage of an appliance gateway; retrieving the user-specific information from the device; retrieving the user-specific information from another device; and retrieving the user-specific information from a remote storage over a communication network (Col. 8 lines 6-20, Col. 10 lines 1-23, Col. 12 lines 40-67, and Col. 14 lines 3-24).

With respect to Claim 11, Harris teaches all the limitations of Claim 8 and further teaches wherein obtaining user-specific information based upon the identity of the user comprises: logically inferring some user-specific information from other user-specific information (Col. 14 lines 3-54).

With respect to Claim 12, Harris teaches all the limitations of Claim 7 and further teaches wherein providing the personalized service for the user based upon the identity

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of the user comprises at least one of: obtaining the information for the user; anticipating needs of the user and providing said needs; updating user preference information- simplifying device control for the user; handling a user schedule; and providing reminders to the user (Col. 10 lines 1-23, Col. 12 lines 40-67, and Col. 14 lines 3-54).

With respect to Claim 13, Harris teaches all the limitations of Claim 7 and further teaches wherein the personalized service to the user based upon the identity of the user comprises: establishing a personal area network for the user based upon the identity of the user (Col. 6 lines 20-27), and providing the personalized service to the user within the personal area network (Col. 10 lines 1-23).

With respect to Claim 14, Harris teaches all the limitations of Claim 13 and further teaches wherein providing the personalized service to the user within the personal area network comprises: providing information to the user within the personal area network (Col. 20 line 23 - Col. 21 line 52).

With respect to Claim 15, Harris teaches all the limitations of Claim 13 and further teaches wherein providing the personalized service to the user within the personal area network comprises: monitoring a supported device within the personal area network (Col. 16 line 11-21 and Col. 17 lines 30-41 and Fig. 19).

With respect to Claim 16, Harris teaches all the limitations of Claim 13 and further teaches wherein providing the personalized service to the user within the personal area network comprises: monitoring a user within the personal area network (Col. 16 line 11-21 and Col. 17 lines 30-41 and Fig. 19).

With respect to Claim 18, Harris teaches all the limitations of Claim 13 and further teaches wherein providing the personalized service to the user within the personal area network comprises: retrieving information for the user over a communication network (Col. 20 line 23 - Col. 21 line 52).

With respect to Claim 19, Harris teaches all the limitations of Claim 13 and further teaches wherein providing the personalized service to the user within the personal area network comprises: determining a user preference for a supported device (Col. 10 lines 1-23, Col. 12 lines 40-67, and Col. 14 lines 3-24).

With respect to Claim 20, Harris teaches all the limitations of Claim 13 and further teaches wherein providing the personalized service to the user within the personal area network comprises: updating user preference information to include the user preference for the supported device (Col. 10 lines 1-23, Col. 12 lines 40-67, and Col. 14 lines 3-24)

With respect to Claim 21, Harris teaches an apparatus comprising: user detection logic operably coupled to detect physical presence of a user (Col. 6 lines 20-45), wherein the detection logic detects that the user is currently in close physical proximity to the communication system based on detection of at least one physical attribute of the user (Col. 6 lines 20-45); and personal agent logic responsive to the user detection logic and operably coupled to provide personalized service to the user based upon the physical presence of the user user (Col. 6 lines 20-45 and Col. 9 line 52 - Col. 10 line 23).

With respect to Claim 22, Harris teaches all the limitations of Claim 21 and further teaches wherein the user detection logic comprises a detector for detecting the physical presence of the user (Col. 6 lines 20-45 and Col. 9 lines 10-20).

With respect to Claim 23, Harris teaches all the limitations of Claim 21 and further teaches wherein the user detection logic is coupled to a detector for detecting the physical presence of the user (Col. 6 lines 20-45 and Col. 9 lines 10-20).

With respect to Claim 24, Harris teaches all the limitations of Claim 21 and further teaches wherein the user detection logic is operably coupled to identify the user (Col. 8 lines 6-20 and Col. 10 lines 1-23 and lines 48-64).

With respect to Claim 26, Harris teaches all the limitations of Claim 24 and further teaches wherein the personal agent logic is operably coupled to provide the personalized service to the user based upon the identity of the user (Col. 10 lines 1-23 and note each example embodiment from cols 13-20).

With respect to Claim 27, Harris teaches all the limitations of Claim 26 and further teaches wherein the personal agent logic is operably coupled to obtain user-specific information based upon the identity of the user and provide the personalized service to the user based upon the user-specific information (Col. 10 lines 1-23).

With respect to Claim 28, Harris teaches all the limitations of Claim 27 and further teaches wherein the user-specific information comprises at least one of: per-user rules, user-defined rules; user preferences; and user applications (Col. 10 lines 1-23, Col. 12 lines 40-67, and Col. 14 lines 3-24).

With respect to Claim 29, Harris teaches all the limitations of Claim 27 and further teaches wherein the personal agent logic is operably coupled to retrieve the user-specific information from at least one of: a local storage; a supported device; and a remote storage over a communication network (Col. 8 lines 6-20, Col. 10 lines 1-23, Col. 12 lines 40-67, and Col. 14 lines 3-24).

With respect to Claim 30, Harris teaches all the limitations of Claim 27 and further teaches wherein the personal agent logic is operably coupled to logically infer some user-specific information from other user-specific information (Col. 14 lines 3-54).

With respect to Claim 31, Harris teaches all the limitations of Claim 26 and further teaches wherein the personal agent logic is operably coupled to obtain information for the user (Col. 10 lines 1-23, Col. 12 lines 40-67, and Col. 14 lines 3-54).

With respect to Claim 32, Harris teaches all the limitations of Claim 26 and further teaches wherein the personal agent logic is operably coupled to anticipate needs of the user (Col. 10 lines 1-23, Col. 12 lines 40-67, and Col. 14 lines 3-54).

With respect to Claim 33, Harris teaches all the limitations of Claim 26 and further teaches wherein the personal agent logic is operably coupled to update user preference information device (Col. 10 lines 1-23, Col. 12 lines 40-67, and Col. 14 lines 3-24).

With respect to Claim 34, Harris teaches all the limitations of Claim 26 and further teaches wherein the personal agent logic is operably coupled to simplify device control for the user (Col. 10 lines 1-23, Col. 12 lines 40-67, and Col. 14 lines 3-24).

With respect to Claim 35, Harris teaches all the limitations of Claim 26 and further teaches wherein the personal agent logic is operably coupled to handle a user schedule (Col. 20 lines 23 – Col. 21 line 15 and Col. 3 lines 20-30).

With respect to Claim 37, Harris teaches all the limitations of Claim 26 and further teaches wherein the personal agent logic is operably coupled to establish a personal area network for the user (Col. 6 lines 20-27) based upon the identity of the user and provide the personalized service to the user within the personal area network (Col. 10 lines 1-23).

With respect to Claim 38, Harris teaches all the limitations of Claim 37 and further teaches wherein the personal agent logic is operably coupled to provide information to the user within the personal area network (Col. 20 line 23 - Col. 21 line 52).

With respect to Claim 39, Harris teaches all the limitations of Claim 37 and further teaches wherein the personal agent logic is operably coupled to monitor a supported device within the personal area network (Col. 16 line 11-21 and Col. 17 lines 30-41 and Fig. 19).

With respect to Claim 40, Harris teaches all the limitations of Claim 37 and further teaches wherein the personal agent logic is operably coupled to monitor the user within the personal area network (Col. 16 line 11-21 and Col. 17 lines 30-41 and Fig. 19).

With respect to Claim 42, Harris teaches all the limitations of Claim 37 and further teaches wherein the personal agent logic is operably coupled to retrieve

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information for the user over a communication network (Col. 20 line 23 - Col. 21 line 52).

With respect to Claim 43, Harris teaches all the limitations of Claim 37 and further teaches wherein the personal agent logic is operably coupled to determining a user preference for a supported device (Col. 10 lines 1-23, Col. 12 lines 40-67, and Col. 14 lines 3-24).

With respect to Claim 44, Harris teaches all the limitations of Claim 43 and further teaches wherein the personal agent logic is operably coupled to update user preference information to include the user preference for the supported device (Col. 10 lines 1-23, Col. 12 lines 40-67, and Col. 14 lines 3-24).

With respect to Claim 45, Harris teaches a computer program product including a computer readable medium, the computer readable medium having a computer program stored thereon for controlling a computer system, the computer program comprising: user detection logic programmed to detect physical presence of a user (Col. 6 lines 20-45), wherein the detection logic detects that the user is currently in close physical proximity to the communication system based on detection of at least one physical attribute of the user (Col. 6 lines 20-45); and personal agent logic responsive to the user detection logic and programmed to provide personalized service to the user based upon the physical presence of the user (Col. 6 lines 20-45 and Col. 9 line 52 - Col. 10 line 23).

With respect to Claim 46, Harris teaches all the limitations of Claim 45 and further teaches wherein the user detection logic comprises a detector for detecting the physical presence of the user (Col. 6 lines 20-45 and Col. 9 lines 10-20).

With respect to Claim 47, Harris teaches all the limitations of Claim 45 and further teaches wherein the user detection logic is coupled to a detector for detecting the physical presence of the user (Col. 6 lines 20-45 and Col. 9 lines 10-20).

With respect to Claim 48, Harris teaches all the limitations of Claim 45 and further teaches wherein the user detection logic is programmed to identify the user (Col. 8 lines 6-20 and Col. 10 lines 1-23 and lines 48-64).

With respect to Claim 50, Harris teaches all the limitations of Claim 48 and further teaches wherein the personal agent logic is programmed to provide the personalized service to the user based upon the identity of the user (Col. 10 lines 1-23 and note each example embodiment from cols 13-20).

With respect to Claim 51, Harris teaches all the limitations of Claim 50 and further teaches wherein the personal agent logic is programmed to obtain user-specific information based upon the identity of the user and provide the personalized service to the user based upon the user-specific information (Col. 10 lines 1-23).

With respect to Claim 52, Harris teaches all the limitations of Claim 51 and further teaches wherein the user-specific information comprises at least one of: per-user rules, user-defined rules; user preferences; and user applications (Col. 10 lines 1-23, Col. 12 lines 40-67, and Col. 14 lines 3-24).

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With respect to Claim 53, Harris teaches all the limitations of Claim 51 and further teaches wherein the personal agent logic is programmed to retrieve the user-specific information from at least one of: a local storage; a supported device; and a remote storage over a communication network (Col. 8 lines 6-20, Col. 10 lines 1-23, Col. 12 lines 40-67, and Col. 14 lines 3-24).

With respect to Claim 54, Harris teaches all the limitations of Claim 51 and further teaches wherein the personal agent logic is programmed to logically infer some user-specific information from other user-specific information (Col. 14 lines 3-54).

With respect to Claim 55, Harris teaches all the limitations of Claim 50 and further teaches wherein the personal agent logic is programmed to obtain information for the user (Col. 10 lines 1-23, Col. 12 lines 40-67, and Col. 14 lines 3-54).

With respect to Claim 56, Harris teaches all the limitations of Claim 50 and further teaches wherein the personal agent logic is programmed to anticipate needs of the user and provide said needs (Col. 10 lines 1-23, Col. 12 lines 40-67, and Col. 14 lines 3-54).

With respect to Claim 57, Harris teaches all the limitations of Claim 50 and further teaches wherein the personal agent logic is programmed to update user preference information device (Col. 10 lines 1-23, Col. 12 lines 40-67, and Col. 14 lines 3-24).

With respect to Claim 58, Harris teaches all the limitations of Claim 50 and further teaches wherein the personal agent logic is programmed to simplify device control for the user (Col. 10 lines 1-23, Col. 12 lines 40-67, and Col. 14 lines 3-24).

With respect to Claim 59, Harris teaches all the limitations of Claim 50 and further teaches wherein the personal agent logic is programmed to handle a user schedule (Col. 20 lines 23 – Col. 21 line 15 and Col. 3 lines 20-30).

With respect to Claim 61, Harris teaches all the limitations of Claim 50 and further teaches wherein the personal agent logic is programmed to establish a personal area network for the user (Col. 6 lines 20-27) based upon the identity of the user and provide the personalized service to the user within the personal area network (Col. 10 lines 1-23).

With respect to Claim 62, Harris teaches all the limitations of Claim 61 and further teaches wherein the personal agent logic is programmed to provide information to the user within the personal area network (Col. 20 line 23 - Col. 21 line 52).

With respect to Claim 63, Harris teaches all the limitations of Claim 61 and further teaches wherein the personal agent logic is programmed to monitor a supported device within the personal area network (Col. 16 line 11-21 and Col. 17 lines 30-41 and Fig. 19).

With respect to Claim 64, Harris teaches all the limitations of Claim 61 and further teaches wherein the personal agent logic is programmed to monitor the user within the personal area network (Col. 16 line 11-21 and Col. 17 lines 30-41 and Fig. 19).

With respect to Claim 66, Harris teaches all the limitations of Claim 61 and further teaches wherein the personal agent logic is programmed to retrieve information for the user over a communication network (Col. 20 line 23 - Col. 21 line 52).

With respect to Claim 67, Harris teaches all the limitations of Claim 61 and further teaches wherein the personal agent logic is programmed to determining a user preference for a supported device (Col. 10 lines 1-23, Col. 12 lines 40-67, and Col. 14 lines 3-24).

With respect to Claim 68, Harris teaches all the limitations of Claim 67 and further teaches wherein the personal agent logic is programmed to update user preference information to include the user preference for the supported device (Col. 10 lines 1-23, Col. 12 lines 40-67, and Col. 14 lines 3-24).

With respect to Claim 71, Harris teaches a system for providing personalized services, the system comprising a gateway operably coupled to detect physical presence of a user (Col. 6 lines 20-45 and Col. 8 lines 35-64) and provide personalized services to the user based upon the physical presence of the user (Col. 6 lines 20-45 and Col. 9 line 52 - Col. 10 line 23), wherein the gateway detects that the user is currently in close physical proximity to the gateway based on detection of at least one physical attribute of the user (Col. 6 lines 20-45).

With respect to Claim 72, Harris teaches all the limitations of Claim 71 and further teaches a physical presence detector in communication with the gateway for providing physical presence information to the gateway user (Col. 6 lines 20-45, Col. 8 lines 35-64 and Col. 9 line 52 - Col. 10 line 23).

With respect to Claim 73, Harris teaches all the limitations of Claim 71 and further teaches wherein the gateway is operably coupled to determine an identity of the user based upon the physical presence of the user and provide the personalized service

to the user based upon the identity of the user (Col. 10 lines 1-23 and note each example embodiment from cols 13-20).

With respect to Claim 74, Harris teaches all the limitations of Claim 71 and further teaches wherein the gateway is operably coupled to obtain user-specific information and provide the personalized services to the user based upon the user-specific information (Col. 10 lines 1-23).

With respect to Claim 75, Harris teaches all the limitations of Claim 74 and further teaches wherein the gateway is operably coupled to obtain the user-specific information from at least one of: a local storage of the computer system; a supported device of the computer system; and a remote storage over a communication network (Col. 8 lines 6-20, Col. 10 lines 1-23, Col. 12 lines 40-67, and Col. 14 lines 3-24).

Claim 6, 25 and 49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Harris in view of U.S. Patent 6,104,913 by McAllister (McAllister).

With respect to Claim 6, Harris teaches all the limitations of Claim 1 but does not explicitly disclose identifying the user based upon biometric information. McAllister teaches a similar system for providing a personalized service based on the detection of the presence of a user (see abstract). McAllister further teaches the user can be identified based upon biometric information (Col. 8 line 62 - Col. 9 line 3). This allows for positive authentication of a user and stronger protection against fraudulent use (Col. 6 lines 55-60).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to take the method disclosed by Harris and modify it as indicated by McAllister such that the method further comprises identifying the user based upon biometric information. One would be motivated to have this, as there is need for improving authentication and reducing fraudulent activity in systems providing personalized services (In McAllister: Col. 5 line 54 - Col. 6 line 13).

With respect to Claim 25, Harris teaches all the limitations of Claim 24 but does not explicitly teach wherein the user detection logic is operably coupled to identify the user based upon biometric information. McAllister teaches a similar system for providing a personalized service based on the detection of the presence of a user (see abstract). McAllister further teaches the user can be identified based upon biometric information (Col. 8 line 62 - Col. 9 line 3). This allows for positive authentication of a user and stronger protection against fraudulent use (Col. 6 lines 55-60).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to take the apparatus disclosed by Harris and modify it as indicated by McAllister such that the apparatus further comprises wherein the user detection logic is operably coupled to identify the user based upon biometric information. One would be motivated to have this, as there is need for improving authentication and reducing fraudulent activity in systems providing personalized services (In McAllister: Col. 5 line 54 - Col. 6 line 13).

With respect to Claim 49, Harris teaches all the limitations of Claim 48 but does not explicitly teach wherein the user detection logic is programmed to identify the user

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based upon biometric information. McAllister teaches a similar system for providing a personalized service based on the detection of the presence of a user (see abstract). McAllister further teaches the user can be identified based upon biometric information (Col. 8 line 62 - Col. 9 line 3). This allows for positive authentication of a user and stronger protection against fraudulent use (Col. 6 lines 55-60).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to take the program disclosed by Harris and modify it as indicated by McAllister such that the program further comprises wherein the user detection logic is operably coupled to identify the user based upon biometric information. One would be motivated to have this, as there is need for improving authentication and reducing fraudulent activity in systems providing personalized services (In McAllister: Col. 5 line 54 - Col. 6 line 13).

Claim 17, 36, 41, 60 and 65 are rejected under 35 U.S.C. 103(a) as being unpatentable over Harris in view of U.S. Patent 5,493,692 by Theimer et al. (Theimer).

With respect to Claim 17, Harris teaches all the limitations of Claim 13 and further teaches wherein providing the personalized service to the user within the personal area network comprises: maintaining a schedule for the user.

Harris does not explicitly disclose providing a reminder to the user within the personal area network. Theimer teaches a reminder can be provided to a user (Col. 10 lines 28-38 and Col. 24 lines 8-31).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to take the method disclosed by Harris and modify it as indicated by Theimer such that the method further comprises providing a reminder to the user within the personal area network. One would be motivated to have this, as there is desire for enabling user to make better use of their time through use of reminders (In Theimer: Col. 3 lines 22-28).

With respect to Claim 36, Harris teaches all the limitations of Claim 26 but does not explicitly disclose providing reminders to the user. Theimer teaches a reminder can be provided to a user (Col. 10 lines 28-38 and Col. 24 lines 8-31).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to take the apparatus disclosed by Harris and modify it as indicated by Theimer such that the apparatus further comprises wherein the personal agent logic is operably coupled to provide reminders to the user. One would be motivated to have this, as there is desire for enabling user to make better use of their time through use of reminders (In Theimer: Col. 3 lines 22-28).

With respect to Claim 41, Harris teaches all the limitations of Claim 37 and further teaches wherein the personal agent logic is operably coupled to maintain a schedule for the user (Col. 20 lines 23 – Col. 21 line 15 and Col. 3 lines 20-30).

Harris does not explicitly disclose providing a reminder to the user within the personal area network. Theimer teaches a reminder can be provided to a user (Col. 10 lines 28-38 and Col. 24 lines 8-31).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to take the apparatus disclosed by Harris and modify it as indicated by Theimer such that the apparatus further comprises providing a reminder to the user within the personal area network. One would be motivated to have this, as there is desire for enabling user to make better use of their time through use of reminders (In Theimer: Col. 3 lines 22-28).

With respect to Claim 60, Harris teaches all the limitations of Claim 50 but does not explicitly disclose providing reminders to the user. Theimer teaches a reminder can be provided to a user (Col. 10 lines 28-38 and Col. 24 lines 8-31).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to take the program disclosed by Harris and modify it as indicated by Theimer such that the program further comprises wherein the personal agent logic is programmed to provide reminders to the user. One would be motivated to have this, as there is desire for enabling user to make better use of their time through use of reminders (In Theimer: Col. 3 lines 22-28).

With respect to Claim 65, Harris teaches all the limitations of Claim 61 and further teaches wherein the personal agent logic is programmed to maintain a schedule for the user (Col. 20 lines 23 – Col. 21 line 15 and Col. 3 lines 20-30).

Harris does not explicitly disclose providing a reminder to the user within the personal area network. Theimer teaches a reminder can be provided to a user (Col. 10 lines 28-38 and Col. 24 lines 8-31).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to take the program disclosed by Harris and modify it as indicated by Theimer such that the program further comprises providing a reminder to the user within the personal area network. One would be motivated to have this, as there is desire for enabling user to make better use of their time through use of reminders (In Theimer: Col. 3 lines 22-28).

(10) Response to Argument

Interpretation of the claimed subject matter at issue:

Before responding to appellant's specific arguments, the examiner first provides the following explanation of the interpretation of the claimed limitation at issue. On page 9 of the Appeal Brief, Appellant argues that the Harris reference "does not include the claimed limitation of detecting physical presence of a user, wherein the detecting includes a determination, based on a least one physical attribute of the user, that the user is currently in close physical proximity to the communication system, as in each of the independent claims 1, 21, 45 and 71." The examiner considers this subject matter to be the primary claim limitation at issue.

Specifically, it is noted that Claim 1 states the limitation

"detecting physical presence of a user, wherein the detecting includes a determination based on at least one physical attribute of the user, that the user is currently in close physical proximity to the communication system" (remaining independent claims have similar limitations).

The basic function of this limitation is clear, detecting the physical presence of a user, which includes determining that the user is in a close physical proximity to the system.

The subject matter that is not immediately clear though is *"based on at least one physical attribute of the user"*. In interpreting this subject matter, the examiner relied upon the given guidelines of MPEP 2111, which states *"During patent examination, the pending claims must be given their broadest reasonable interpretation consistent with the specification."* *In re Hyatt*, 211 F.3d 1367, 1372, 54 USPQ2d 1664, 1667 (Fed. Cir. 2000)." Additionally, the context of the dependent claims is taken into consideration. Particularly, claim 2 states "using a detector to detect the physical presence of the user". The context of "using a detector" is important when reviewing the specification as will be seen.

The examiner first notes that appellant's specification does not define a specific meaning for the subject matter *"based on at least one physical attribute of the user"*. The last paragraph on Page 13 (and continuing on to Page 14) of the appellant's specification is, in the examiner's opinion, the best section describing the subject matter at issue. This paragraph describes the inventions use of a "mechanism for detecting and identifying the user" and that this mechanism can "utilize any user detection/identification techniques". Some examples include "physical presence

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detection” which may include “body heat detection, motion detection, proximity detection”. This paragraph continues on to describe a “physical presence detector” which examiner correlates to the detector of claim 2. Examples of this detector include “a keypad”, “a card reader for reading an access card”, “an electromagnetic sensor”, and “other detector”. The specification does not define any of these example methods or detectors as being specific to the idea of “based on at least one physical attribute of the user”. However, the examples are all related to some form of physical association to the user. The physical association may be one specific to the user’s body, i.e. body heat, fingerprint identification, or one related to the physical environment of the user, i.e. the physical interaction with a keypad, the use of a card reader and an access card, the card being physically associated with a given user. Also important to note is the meanings that can be derived based on the context of claim 2. A “detector”, such as those examples described above, is not introduced until claim 2, which conveys that the detecting subject matter of claim 1 is even broader in scope than the given detector examples of the specification (Chem. Co. v. United States, 226 F.3d 1334, 1341-42 (Fed. Cir. 2000) - concluding that an independent claim should be given broader scope than a dependent claim to avoid rendering the dependent claim redundant.). Based on this information from Appellant’s specification and claim language, the examiner interprets “based on at least one physical attribute of the user” as essentially meaning based on a physical association to the user.

Argument A - Pages 9-13 of Appeal Brief:

On page 9 of the Appeal Brief, Appellant argues that the Harris reference “does not include the claimed limitation of detecting physical presence of a user, wherein the detecting includes a determination, based on a least one physical attribute of the user, that the user is currently in close physical proximity to the communication system, as in each of the independent claims 1, 21, 45 and 71.” Appellant continues through page 10 of the Appeal Brief by stating that the peer electronic devices of Harris are not users and that the determination of proximity based on detecting a signal on a wireless link in Harris is not the same as a determination of proximity based on at least one physical attribute of a user. Appellant further comments on this same argument in the first paragraph on page 12 of the Appeal brief, stating that Harris “instead teaches detecting the physical proximity of electronic devices to each other based on detection of a signal on a wireless link”. The appellant further argues this point on page 13, stating that the “teachings of Harris et al. stand in sharp contrast to the features of the present independent claims, which involve a detecting of the physical presence of a user that includes determining the user is currently in close physical proximity to the communication system, based on at least one physical attribute of the user”. Appellant further states, “The peer electronic devices in the communication network of Harris et al. are clearly not users, as that term would be understood by those skilled the art.”

Response to Argument A:

The examiner does not contend that the peer electronic devices are users. The examiner asserts that the detection of the physical proximity of the electronic devices is

a detection of the physical presence of a user that includes determining the user is currently in close physical proximity to the communication system, based on at least one physical attribute of the user.

Harris explicitly describes that the electronic peer device can have a user/owner and corresponding personalization data. "Personalization data 52 characterize a user or owner of peer 20 and may change from user to user or from time to time" (Col. 8 lines 10-12). This forms a physical association between a given device and a user that allows a user to be identified and furthermore determined to be within close physical proximity, i.e. related to a detection of the physical presence of a user that includes determining the user is currently in close physical proximity to the communication system, based on at least one physical attribute of the user. Col. 10, lines 11-16, explicitly alludes to this, stating, "As a result, the certain appliances will always be programmed with a particular user's personalization data whenever that user is near, without requiring action on the user's part, and regardless of prior persons who may have used the appliance." (emphasis added). Col. 21 lines 4-8 also describes this in relation to a personal data peer device (Col. 20 lines 24-27), stating "Capability for storing and broadcasting an identifier or indicator of the person's presence or location relative to the data transactions..." (emphasis added).

Part of the overall purpose of the invention of Harris is to provide a device to automatically perform transactions in specific situations (Col. 4 lines 12-15). This may include, for example, identification of a user with no overt action by the user (Col. 4 lines 15-23 and Col. 21 lines 4-8), or appliance personalization of nearby appliances (Col. 10

line 7-16). These particular situations are described by Harris as occurring when the device is in close physical proximity to the communication system (Col. 6 lines 20-45).

The examiner also refers back to the previous discussion of the interpretation of the claimed subject matter. Particularly, the examiner draws a parallel to an example of a detector of physical presence described in appellant's specification; the access card and card reader discussed on pages 13-14 of appellant's specification. From a technical point of view, when an access card is used, a user is not being detected, but rather the presence and physical interaction of the card with the card reader is detected. However, as the access card is physically associated with a particular user, there is still a physical detection of the user based on this physical association. Clearly, an access card cannot physically interact with the detection system on its own. In much the same way, the electronic peer device is physically associated with a user and cannot physically interact with the system on its own. Particularly, as described in the paragraph above, the physically interaction of the peer device with the system is a result of the user's close physical proximity to the communication system. Because of this, the determination that the peer device is physically proximate to the system is a detection of the physical presence of the user.

Based on this evidence and the examiner's interpretation of the claimed subject matter, the proximity of such a peer as described in Col. 6, lines 20-45, is a detection of the physical presence of a user, wherein the detecting includes a determination based on at least one physical attribute of the user, that the user is currently in close physical proximity to the communication system.

Argument B - page 13 of Appeal Brief:

On page 13 of the Appeal Brief, Appellant argue, "the detection of a signal transmitted onto the wireless communication link by the peer electronic devices in Harris et al. cannot be considered a determination based on a physical attribute of a user, since the determination in Harris et al. is based on the presence or absence of the signal on the link." Appellant further asserts "the peer devices in Harris et al do not correspond to the user of the present independent claims, and the determination of device proximity based on a detecting the presence of a wireless signal in Harris et al. is completely different from the determination of user proximity to the communication system based on a physical attribute of the user, as in the present independent claims.

Response to Argument B:

The examiner first notes that appellant does not offer any explicit evidence or reasoning to support their argument. While Appellant states that "the detection of a signal transmitted onto the wireless communication link by the peer electronic devices in Harris et al. cannot be considered a determination based on a physical attribute of a user, since the determination in Harris et al. is based on the presence or absence of the signal on the link", there is no explanation of why the basis of the presence or absence of the signal on the link does not correspond to the subject matter of "a determination based on a physical attribute of a user".

It is also noted, that Harris does not necessarily rely on a wireless signal. Col. 6 lines 31-35, states "First and second nodes 20 must detect that they are in a particular proximity to one another and if so a communication link is established. This link may

accomplished by known RF, IR, optical or acoustic techniques or by conduction through a living body.”

As described in the *Response to Argument A* above, Harris explicitly describes that the electronic peer device can have a user/owner and corresponding personalization data. “Personalization data 52 characterize a user or owner of peer 20 and may change from user to user or from time to time” (Col. 8 lines 10-12). This forms a physical association between a given device and a user that allows a user to be identified and furthermore determined to be within close physical proximity. Based on this and the examiner’s interpretation of the claim language, the detection of a peer device is a detection of the physical presence of a user and includes a determination based on a physical attribute of a user.

Argument C - Page 14 of the appeal brief:

On page 14 of the appeal brief, appellant argues “Appellants reiterate that the teaching of Harries et al. with regard to determining proximity is that of determining proximity between network devices, which is performed for the purpose of establishing a personal area network of peer devices, and is based on detecting the presence or absence of a signal transmitted by a device on a wireless communication link.”

Response to Argument C:

As discussed above, the purpose of the invention of Harris additionally allows a device to automatically perform transactions in specific situations (Col. 4 lines 12-15).

This may include, for example, identification of a user with no overt action by the user (Col. 4 lines 15-23 and Col. 21 lines 4-8), or appliance personalization of nearby appliances (Col. 10 line 7-16). These particular situations are described by Harris as occurring when the device is in physical proximity to the communication system (Col. 6 lines 20-45). The physical association between a given device and a user allows a user to be identified and furthermore determined to be within close physical proximity.

As described in the *Response to Argument A* above and based on the examiner's interpretation of the claimed language, it is clear that the detection of a peer electronic device is a detection of the physical presence of user, and that this detection includes a determination that the user is currently in close physical proximity to the communication system based on at least one physical attribute of the user.

Argument D - Page 14 of the appeal brief:

On page 14 of the appeal brief, Appellant argues "Lines 7-16 of column 10 in Harris et al. describe personalization of appliances as an advantage flowing from the operation of the Harries et al. system. However, these advantages are accomplished in Harris et al. through a system of peer device proximity determination, which is fundamentally different from detecting the physical presence of a user, wherein the detecting includes a determination, based on at least one physical attribute of the user, that the user is currently in close physical proximity to the communication system."

Response to Argument D:

Appellant provides no intrinsic or extrinsic evidence as to how the system of Harris is “fundamentally different” from the claimed invention. It is interesting that Appellant acknowledges the personalization of appliances, yet does not set out to described or explain the fundamental differences. Particularly, Col. 10, lines 11-16, explicitly states, “As a result, the **certain appliances will always be programmed with a particular user’s personalization data whenever that user is near**, without requiring action on the user’s part, and regardless of prior persons who may have used the appliance.” (emphasis added). Compare this to the language of Claim 1 of appellant’s application, which states “detecting the physical presence of a user....providing the personalized service to the user based upon the physical presence of the user”. The examiner fails to see any clear “fundamental differences”, particularly given the evidence discussed by the examiner above in the Response to Argument A and in the examiner’s interpretation of the claim language.

Argument E - pages 15-17 of appeal brief:

On pages 15-17, appellant argues the rejection of Claims 6, 25 and 49. These arguments rely on the arguments related to the claims rejected under 35 U.S.C. 102 as being anticipated by Harris.

Response to Argument E:

The examiner has responded to each of the arguments related to the claims rejected under 35 U.S.C. 102 as being anticipated by Harris. As there are no additional issues, no further response is required.

Argument F - pages 18-20 of appeal brief:

On pages 18-20, appellant argues the rejection of Claims 17, 35, 41, 50 and 65. These arguments rely on the arguments related to the claims rejected under 35 U.S.C. 102 as being anticipated by Harris.

Response to Argument E:

The examiner has responded to each of the arguments related to the claims rejected under 35 U.S.C. 102 as being anticipated by Harris. As there are no additional issues, no further response is required.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

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For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,


David Lazaro 5/11/06

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